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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/655,812	09/04/2003	R. Ashby Armistead	2705-307	8007

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EXAMINER
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HARRELL, ROBERT B

ART UNIT	PAPER NUMBER
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2142

DATE MAILED: 05/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/655,812

Applicant(s)

ARMISTEAD ET AL.

Examiner

Robert B. Harrell

Art Unit

2142

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 7-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>see attached Office Action</u> .       |

Art Unit: 2142

1. Claims 7-24 remain presented for examination.
2. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.
3. The applicant should use this period for response to thoroughly and very closely proof read and review the whole of the application for correct correlation between reference numerals in the textual portion of the Specification and Drawings along with any minor spelling errors, general typographical errors, accuracy, assurance of proper use for Trademarks <sup>TM</sup>, and other legal symbols ®, where required, and clarity of meaning in the Specification, Drawings, and specifically the claims (i.e., provide proper antecedent basis for "the" and "said" within each claim). Minor typographical errors could render a Patent unenforceable and so the applicant is strongly encouraged to aid in this endeavor.
4. The following is a quotation of the second paragraph of 35 U.S.C 112:

*The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.*

5. Claims 7-24 are rejected under 35 U.S.C 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. The scope of meaning of the following claim language is not clear:

- a) "the device"--claim 7 (last line)[\*note line 8\*];
- b) "the multi-link connection"—claim 8 (line 2)[\*note line 3 and line 7 of claim 7\*];
- c) "the server"—claim 9 (line 3)[\*should be "the server *means*"\*];
- d) "the first terminating device"—claim 22 (line 6 and 8);
- e) "its"—claim 11 (line 2).

6. As to 5 (a-e) above, these are but a few examples of numerous cases where clear antecedent basis are lacking and not an exhausting recital. Any other term(s) or phrase(s) over looked by examiner and not listed above which start with either "the" or "said" and do not have a single proper antecedent basis also is indefinite for the reasons outlined in this paragraph. Also, these are but a few examples where term(s) or phrase(s) are introduced more than once without adequate use of either "the" or "said" for the subsequent use of the term(s) or phrase(s). Moreover, multiple introduction of a term, or changes in tense, results in a lack of clear antecedent basis for term(s) or phrase(s) which relied upon the introduced term. Failure to correct all existing cases where clear antecedent basis are lacking can be viewed as non-responsive. Nonetheless, should a response yield all claims allowable short *a few* cases where clear antecedent basis are lacking within the claims, a preemptive authorization to enter an examiner's amendment to the record to correct such would accelerate a notice of allowance over a final rejection. Such could be added at the end of an applicant's response with the following statement: "Examiner is hereby authorized, without the need of further contact by examiner, to

Art Unit: 2142

enter an Examiner's Amendment to correct any cases where antecedent basis are lacking." if the applicant so elects. This does not diminish the applicant's requirement to correct all such cases not so listed in the example few given above nor prohibit any amendments after a notice of allowance by the applicant.

7. Claim 21 (line 4) recites a first terminating device, is there a second?

8. Per claim 7 (line 2), it is recited that the network means includes the further recited limitations and the first switch means requests a connection by sending a message to the network means as if the first switch means is not included within the network means. Thus the claims are vague and indefinite as to the location of the claimed limitations as being included within the network means or excluded from the network means.

9. Per claim 20, "terminating" as implemented in the claims cannot be clearly ascertained to be the ending of a connection or the establishment of that connection. To "terminate" in the manner of source/sink means to connect a link end point to a sink to establish communication rather than to disconnect. Thus the term "terminating" in the claims is vague and indefinite as it cannot be clearly ascertain if a link is closed/finished/dropped/ended or established/opened and the like. Therefor, "terminate", and derivations thereof, is/are vague through out all claims.

10. The non-statutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. In re Thorington, 418 F.2d 528, 163 USPQ 644 (CCPA 1969); In re Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); In re Van Ornam, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); In re Longi, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); and In re Goodman, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993), In re Berg 140 F.3d at 1437, 46 USPQ2d at 1233 (Fed. Cir. 1998), 195 F.3d 1322, 1326, 52 USPQ2d (Fed. Cir. 1999), Eli Lilly CAFC on petition for rehearing En Banc (58 USPQ2d 1869).

11. A timely filed terminal disclaimer in compliance with 37 C.F.R. 1.321 (c) may be used to overcome an actual or provisional rejection based on a non statutory based double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 C.F.R. 1.130(b). Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 C.F.R. 3.73(b).

12. **Claims 7-24 are rejected under the judicially created doctrine of obviousness-type double patenting** as being unpatentable over claims 1-29 of United States Patent 6,260,071. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of this instant application encompass and infringe the claims of the patent.

13. **Claims 7-24 are rejected under the judicially created doctrine of obviousness-type double patenting** as being unpatentable over claims 1-6 of United States Patent 6,643,703. Although the

Art Unit: 2142

conflicting claims are not identical, they are not patentably distinct from each other because the claims of the patent encompass those claims of this instant application encompass and infringe.

14. **Claims 7-24 are rejected under the judicially created doctrine of obviousness-type double patenting** as being unpatentable over claims 1-17 of United States Patent 6,529,959. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of this instant application encompass and infringe the claims of the patent.

15. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this action:

**A person shall be entitled to a patent unless -**

**(e) the invention was described in — (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language;**

16. **Claims 7-24 are rejected under 35 U.S.C. 102 (e)** as being anticipated by Drott et al. (United States Patent Number: 6,094,683).

17. Prior to addressing the grounds of the rejections below, should this application ever be the subject of public review by third parties not so versed with the technology (i.e., access to IFW through Public PAIR (as found on <http://portal.uspto.gov/external/portal/pair>)), this Office action will usually refer an applicant's attention to relevant and helpful elements, figures, and/or text upon which the Office action relies to support the position taken. Thus, the following citations are neither all-inclusive nor all-exclusive in nature *as the whole of the reference is cited* and relied upon in this action as part of the substantial evidence of record. Also, no temporal order was claimed for the acts and/or functions. Furthermore, in view of the above rejections, each application and patent stands on its own merits and the following only applies to this instant application.

18. Per claim 20, as best understood by examiner in light of the above 112 matters, Drott et al. taught a method (e.g., see Abstract) for conducting a multi-link session (e.g., see Abstract), comprising:

a) receiving a set up message from a source client (e.g., see figure 1 (102 (top left))), the set up message requesting establishment of a first communication link between the source client and a termination client (e.g., see figure 1 (lower right (106)) and col. 2 (line 48-et seq.));

Art Unit: 2142

- b) detecting a request for a second communication link from the source client (e.g., see col. 7 (lines 20-30));
- c) accessing a database to retrieve connection characteristic information (i.e., source and destination addresses, link speed(s), node topological location within the network for routing table(s) exc...) relating to the first communication link after terminating (sinking) the first communication link and before terminating (sinking) the second communication link (e.g., see figure 1 (121) and col. 7 (lines 20-30)); and,
- d) routing the second communication link responsive to the connection characteristic information (e.g., see figure 3 and col. 3 (line 59-et seq.)). It is noted that Drottter also taught in col. 7 (lines 31-et seq.) termination as in dropping the link/connection.

19. Per claim 21, any sink point (termination point) such as switch 124 in figure 1 reads on the limitations of this claim in view of routing via the forwarding table of col. 6 (line 55-et seq.).

20. Per claim 22 and claim 23, since figure 1 taught the use of multi-link connection(s) for point to point communication via the network, these limitations were so covered in figure 1 and in col. 1 (line 58-et seq.).

21. Per claim 24, such would be covered in col. 7 (lines 31-54)

22. Per claims 7-19, such is also encompassed by Drottter as indicated above and is thus rejected for the same reason above. In addition, Drottter taught a network means (all of figure 1) including a first and second switch means (e.g., 123 and 126 in figure 1) wherein the first switch means (124) requested a connection by sending a setup message (e.g., see figure 3 and col. 2 (line 48-et seq.)) to the network means (via 120 of figure 1) based on a request from an originating means (e.g., 102 of figure 1) and a terminating means (e.g., 106 of figure 1) (via usage of the forwarding table indicated above). The second switch means (e.g., 126 of figure 1) included server means (e.g., sum of all "ports" including their drive/software) that supported multi-link connection(s) with the terminating means (e.g., see figure 1 (106)) and including multiple device (e.g., a "port" and its software/driver) connected to the server means via corresponding transmission means (i.e., wires). Drottter also taught routing means (e.g., 121 of figure 1) couple to the network means to store data entry in a database used to identify the originating means as a potential source to function as claims per col. 6 (line 55-et seq.). Figure 3 shows packets being transmitted, and unless total chaos is to occur, time slots were reversed via a common communications channel for orderly packet transmissions with the network means. As for "phone numbers" see col. 2 (lines 2-14) in which a link was generically described as a wire carrying protocol (i.e., Xmodem and/or Manchester encoding protocol, was a known protocol to those skilled in the computer wire communication art) between two computers (well known to be connected via phone lines). Furthermore, in light of the 112 matters above with respect to "inducing", Topology database 121, Fabric Manager 120 and switch 126 could also be viewed as the claimed first or second switch means per claims 18 and 19. While claims 7-19 are in means plus function format, a review of the elements of Drottter shows that the element disclosed therein were equivalent in function and thus equivalent to those disclosed in this instant application.


Art Unit: 2142

23. A shortened statutory period for response to this action is set to expire 3 (three) months and 0 (zero) days from the data of this letter. Failure to respond within the period for response will cause the application to become abandoned (see MPEP 710.02, 710.02(b)).

24. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert B. Harrell whose telephone number is (571) 272-3895. The examiner can normally be reached Monday thru Friday from 5:30 am to 2:00 pm and on weekends from 6:00 am to 12 noon Eastern Standard Time.

25. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew T. Caldwell, can be reached on (571) 272-3868. The fax phone number for all papers is (703) 872-9306.

26. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-9600.

  
ROBERT B. HARRELL  
PRIMARY EXAMINER  
GROUP 2142